

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT (CORRECTED)
LB588

Hearing Date: Tuesday February 03, 2009
Committee On: Agriculture
Introducer: Dierks
One Liner: Adopt the Dog and Cat Purchase Protection Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Carlson, Council, Dierks, Dubas, Karpisek, Price, Schilz, Wallman

Nay:

Absent:

Present Not Voting:

Proponents:

Senator Cap Dierks
Clem Disterhaupt
Judy Varner
LaGene Flowers
Robert A. Downey

Representing:

Introducer
Nebraska Professional Pet Breeders Association
Nebraska Humane Society
Self
Capital Humane Society

Opponents:

Neutral:

Casey Schaaf
Paul Nichols
Denise Blede
Lorraine S. Rexroat
David Engler

Representing:

Nebraska Dog Breeders Association
Self
United Pet Professionals Association
Self
Petland Omaha

Summary of purpose and/or changes:

LB 588 inserts wholly new statutory provisions cited as the Dog and Cat Purchase Protection Act. The bill contains familiar elements of similar consumer protection statutes that have been enacted in other states. Duties of both buyers and sellers of pets are assigned by the bill and specific remedies available to purchasers of pets having health defects existing at the time of the sale are prescribed, as well as the means by which purchasers may avail themselves of such remedies.

The primary substantive elements of the bill include the following:

Definitions:

Section 2 of the bill sets forth defined terms used throughout the Act. Definitions of commercial breeders, pet shops and various other terms contained in Section 54-626 of the Commercial Dog and Cat Operator Inspection Act are incorporated by reference. Section 2 also includes "casual breeder", "retail purchaser" and "serious health problems" as

defined terms.

Disclosure by seller:

Certain duties of disclosure by sellers are assigned by Section 4 of the bill. Specifically, sellers are required under the bill to deliver to a retail purchaser the following:

*Written disclosure of information identifying the breeder, information about the animal including individual identifying markings or assigned ID device, its parentage, and records of any inoculations, worming treatments and medications given by the seller or parties possessing the animal prior to the seller.

*A health certificate signed by a licensed veterinarian if the animal is sold outside of the state. Sellers are prohibited under section 4 of the bill from selling dogs or cats unless examined by a veterinarian prior to sale.

*A statement of the rights and responsibilities of the seller and the purchaser as set forth in Sections 5 & 6 of the bill.

A copy of the disclosure for each sale is to be maintained by the seller for a period of one year from the date of the sale.

Purchaser remedies:

Section 5 of the bill provides a choice of remedies if, subsequent to delivery of the animal, the purchaser discovers a serious health defect which existed in the animal at the time of delivery, or the animal dies as a result of serious health problems existing at the time of the sale. In such case, a purchaser may demand one of the following:

*Refund of the purchase price

*Exchange for an animal of equal value

*Reimbursement for reasonable veterinary fees incurred by the purchaser, not exceeding the purchase price. Reasonable veterinary fees are defined to mean comparable costs of service for appropriate diagnosis and treatment.

A purchaser may perfect the right to demand such remedies if meeting the following conditions:

*The purchaser causes a veterinary examination of the animal within 7 days of taking delivery of the purchases

*A serious health problem existing at the time of delivery of the animal by the seller is diagnosed by the examining veterinarian

*The animal dies within 1 year from the date of delivery as a result of a serious health problem existing at the time of delivery diagnosed by an examining veterinarian

*The purchaser notifies the seller of the diagnosis within two business days and provides the seller with the veterinarian's contact information or a copy of the veterinary report.

The buyers recourse to remedies under Section 5 of the bill for discovery of health defect subsequent to acceptance of delivery, or the death of an animal attributable to health defect, existing at the time of delivery are denied under Section 6 of the bill under the following circumstances:

*Health problems or death are attributable to mistreatment, neglect or injury occurring subsequent to delivery

*The health certificate provided by the seller disclosed the serious health problems

*The purchaser fails to provide recommended veterinary care

Enforcement:

A purchaser is authorized under Section 7 to initiate court proceedings to enforce compliance with claims for remedy initiated under the Act. A seller contesting a claim by a purchaser under the act may demand that the purchaser produce the animal for examination or autopsy by the seller's veterinarian. A purchaser is liable for seller's cost of such examination if a seller is determined not obligated to remedy the purchaser under the Act. A prevailing party in an action

under the act is limited to recovery of actual costs and no more than \$500 legal fees.

Section 9 declares that purchaser's remedies under the act are not exclusive and do not bar other remedies otherwise available under law.

Animal control facilities and animal shelters are excluded from the duties and obligations of sellers under the Act. The bill contains an operative date of January 1, 2010.

Explanation of amendments:

The committee amendment (AM 705) strikes the original provisions and becomes the bill. However, the amendment retains most of the substantive elements of the bill as introduced but with numerous revisions for clarification, simplification and technical correction. The substantive differences between the committee amendment and the bill as introduced include the following:

*Section 2 of the bill as introduced is replaced with a new definitional section with the following revisions:

*The amendment omits defined terms for "pet shop","commercial breeder", and "dealer". These are instead incorporated within the new defined term for "seller" which is defined to mean any of these entities that sell animals to a final consumer. The term seller is then substituted throughout the bill in replacement of a listing of types of entities that are subject to the act when selling at retail.

*The term "purchaser" replaces the defined term "retail purchaser" and its definition is revised to conform with the use of the term "seller" to replace the listing of retail seller categories. The revised term retains the clarification that the term excludes persons purchasing pet animals for later resale.

*Original defined terms for "dog and cat" are consolidated into a new defined term "pet animal" which is confined to mean dogs and cats. This term is further confined from the original bill so that the bill would apply to pet animals under the age of fifteen months old when sold. The term pet animal is substituted for the phrase "dog and cat" where appropriate throughout the bill.

*Inserts a new term, "clinical symptom" defined to mean an illness or dysfunction apparent to a veterinarian by observation or examination.

*The term "health certificate" is redefined as a certificate of veterinary inspection, which is more recent terminology, utilized in the Animal Import Act and in other usages to designate the document intended.

*The term "serious health problem" is defined to limit adverse health conditions that manifest within 15 months of age of the animal and Parvovirus if contracted within 7 days of sale of the animal.

*Sections 3 & 4 of the bill as introduced are replaced and consolidated into section 3 of the amendment. The substantive purposes of original sections 3 and 4 are retained, but in revised form as follows:

*Seller disclosure requirements of the original bill are retained but clarified as follows:

*The requirement of disclosure of breed is revised to include the option of the seller indicating the breed is unknown or the animal is of mixed breed

*The disclosure of license number of the seller and the breeder or others in the intermediate chain of ownership is clarified to include the state or federal license number.

*Other disclosures such as date of birth and worming, and other veterinary treatments are revised to require such information only if known. The term vaccination is substituted for the term inoculation.

*Adds requirement to disclose dates of veterinary examination while in the possession of a seller.

*Further optional disclosures are added as a separate subsection (2) of section 4 including the following:

*That the animal was examined by a veterinarian who found no clinical symptoms of disease or congenital defect that would indicate the likelihood of health problems

*A statement disclosing known health problems

*Continues the requirement of a seller to disclose rights and responsibilities of a purchaser but clarifies delivery of a

legible copy of the Dog and Cat Purchaser Protection Act is an acceptable means of satisfying this responsibility. The duty of maintaining records associated with the disclosure are retained but in a clarified form.

*Original section 3 of the bill is omitted but its purposes are reassigned to subsection (4) of section 3 of the amendment. The amendment clarifies the meaning of animals going out of state as pet animals that will be relocated or permanently domiciled outside of the state and conforms the requirement for providing a health certificate to the provisions for issuing a small animal certificate of veterinary inspection.

*Sections 5 & 6 of the bill as introduced are renumbered under the amendment as sections 4 & 5 due to the omission of original section 3. Substantive revisions to these sections as amended include:

*A duty to have an animal examined within seven days of purchase is clarified to mean that the examination is necessary in order for the purchaser to have recourse to the remedies provided elsewhere in this section.

*The liability of the seller for reimbursement for veterinary fees in the event of death of a pet animal is limited to an amount equal to one-half the purchase price of the animal.

*The length of warranting health defects discovered after the delivery of the pet animal to the purchaser is revised from being 1 year from the date of delivery to the point the animal reaches 15 months of age.

*The buyer's recourse is denied if the disclosure of health defects is made pursuant to the optional disclosures added as subsection (2) of revised section 3 or if the purchaser fails to provide preventative vaccination, de-worming or medication as recommended by a veterinarian.

*Terms as defined under the amendment are substituted for phraseology and defined terms utilized in the introduced bill.

*Original sections 7-10 are renumbered as sections 6-8 of the amendment. A series of revisions to original sections 7 - 10 are made by the amendment as follows:

*Clarifies that an action to assert remedy may be filed in a court of competent jurisdiction.

*Adds that the act does not limit a seller from providing warranties beyond those contemplated by the act.

*Omits original section 9. The exclusion of animal control facilities and animal shelters is accomplished through the amendment by exclusion in the definition of seller.

Tom Carlson, Chairperson